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IN THE  
**Supreme Court of the United States**

October Term, 1945

**No. 37**

ORDER OF RAILWAY CONDUCTORS OF AMERICA,  
H. W. FRASER, President Thereof, *et al.*  
*Petitioners*

*v.*

SHELTON PITNEY and WALTER P. GARDNER,  
Trustees of CENTRAL RAILROAD CO. OF NEW JERSEY, *et al.*  
*Respondents*

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**BRIEF FOR RESPONDENTS,  
SHELTON PITNEY AND WALTER P. GARDNER,  
TRUSTEES OF THE PROPERTY OF THE CENTRAL  
RAILROAD COMPANY OF NEW JERSEY**

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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE THIRD CIRCUIT

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## Opinions Below

The opinion of the District Court appears at R. 50-52. The District Court's decree appears at R. 52-54. — The opinion of the Circuit Court is reported in 145 F. (2d) 351 and appears at R. 56-60.

## Jurisdiction

The judgment of the Circuit Court was entered September 25, 1944. The petition for certiorari was filed on February 16, 1945, and was granted on June 18, 1945. 63 S. Ct. 1566, 89 L. Ed. 1550.

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended.

## Statutes Involved

The Railway Labor Act, as amended (45 U. S. C. A., Section 151, *et seq.*) and Section 77 of the Bankruptcy Act (11 U. S. C. A., Section 205).

## Statement

This proceeding arises out of a dispute between two railway brotherhoods, the Petitioner, Order of Railroad Conductors of America (hereinafter called ORC) and the Respondent-Intervenor, the Brotherhood of Railroad Trainmen (hereinafter called BRT), as to whose members are entitled to fill five jobs as conductors of drill crews known as the Standard Oil and the Bayway drills working within the duly established switching limits of the Elizabethport, New Jersey yard of the railroad being operated by the respondents as Trustees. The members of both organizations are competent and qualified, and the rates of pay of both organizations are practically the same.

The Respondents, Shelton Pitney and Walter P. Gardner are the Trustees of the property of The Central Railroad Company of New Jersey, which, since October 30, 1939, has been in process of reorganization under Section 77 of the Bankruptcy Act in a proceeding pending in the

United States District Court for the District of New Jersey (R. 1).

The contract which was challenged by the petition filed in the said reorganization proceedings by ORC is an agreement between the Trustees and BRT entered into in 1943 (R. 21-24), which did no more than recognize the rights of BRT, which had been established long prior to 1940, in the manner prescribed by the Railway Labor Act, to man with its conductors the five drills, which are operated within switching limits. The District Court sitting in bankruptcy held that the said agreement is in nowise a violation of the Bankruptcy Act or the Railway Labor Act (R. 53).

Both ORC and BRT had what are termed "basic" agreements with the Debtor. The basic agreement of ORC is set forth in "Rules Affecting the Employment and Pay of Conductors" effective August 1, 1927 (R. 40). (See Exhibit T-1.) The basic agreement of BRT with the Debtor is set forth in "Rules Affecting the Employment and Pay of Trainmen & Yardmen" effective May 1, 1928, retroactive, so far as rates were concerned, to December 1, 1926 (R. 41). (See Exhibit T-2.)

In 1929, the Debtor, with the consent of ORC and BRT, established switching limits at Elizabethport and Elizabeth. The southerly boundary of such switching limits was and is at Morse's Creek. The drills which are involved in this proceeding are operated within said switching limits (R. 40).

Under its basic agreement with the Debtor, ORC has general jurisdiction over road runs. BRT, under its basic agreement with the Debtor, has jurisdiction over yards (R. 40).

Subsequent to 1929, and prior to 1940, notwithstanding the establishment of switching limits in 1929, there was a certain amount of overlapping in that Road Conductors (ORC) manned the five drills in question, while Yard Con-



ductors (BRT) manned what are termed "Transfer Runs," which ran on the Perth Amboy Branch, south of Morse's Creek, and therefore, outside the switching limits fixed in 1929 (R. 42).

ORC protested against Yard Conductors manning these Transfer Runs south of Morse's Creek, claiming that such work should be performed by Road Conductors, as it was beyond the switching limits (R. 42).

By a memorandum of agreement, dated March 7, 1940, between the Debtor and ORC, it was agreed that "After March 25th, 1940, Road Conductors will perform all conductors' service Morser's Creek and South on the Perth Amboy Branch" (R. 5, 6).

When the Road Conductors (ORC), pursuant to their contention and demand, were substituted for Yard Conductors on the Transfer Runs outside the switching limits, the Yard Conductors (BRT) protested that they should replace the Road Conductors on the Bayway and Standard Oil drills, totalling five in number, operated within the switching limits (R. 43).

The Trustees on or about March 6, 1943 entered into an agreement with BRT recognizing the right of its men, Yard Conductors, to man the five drills (R. 21-24). ORC thereupon filed its petition on or about March 15, 1943, praying for an order restraining the Trustees from displacing members of ORC from said jobs and filling the jobs with members of the Brotherhood of Railroad Trainmen. ORC claims that it is entitled to fill such jobs with its members under the agreement between ORC and the Debtor dated March 7, 1940 (R. 1-11).

In its petition to the District Court and in the affidavit submitted therewith, ORC made no reference to the establishment of switching limits (R. 1-11). Even after the Trustees and BRT in their answers stated that switching limits had been established (R. 14, 28), it was only after extensive testimony had been taken before the Standing Master that ORC admitted switching limits were established in 1929 (R. 40).

When there was a dispute as to the establishment of a switching limit at Morse's Creek or as to ORC's approval of that limit at the time of its establishment, the Trustees had some question as to the advisability of the Bankruptcy Court exercising its discretion to deal with the petition of the ORC, although answering, of course, that as officers of the Court they should obey any order that the Court might issue. However, inasmuch as the establishment of the switching limits in 1929, with ORC approval, was admitted by ORC before the standing Special Master, the Trustees believe that there was thereby removed from the case the only reason militating against disposition of the matter by the District Court sitting in bankruptcy.

## ARGUMENT

### POINT I

**The District Court sitting in bankruptcy on petition of a railroad labor organization alleging that contract made by Trustees was in violation of the Bankruptcy Act had jurisdiction to determine whether there was such violation.**

The petition filed in the reorganization proceedings of The Central Railroad Company of New Jersey by the Petitioners invoked the jurisdiction of the United States District Court for the District of New Jersey sitting in bankruptcy on the ground that the Trustees who had been appointed by that Court proposed to take action, with respect to the manning of the five drills, which would result in a violation of subsection (n) of Section 77 of the Bankruptcy Act, which provides:

"No judge or trustee acting under this title shall change the wages or working conditions of railroad



employees except in the manner prescribed in sections 151 to 163 of Title 45, as amended June 21, 1934, or as they may be hereafter amended."

A district court sitting in bankruptcy in a proceeding under Section 77 of the Bankruptcy Act has broad powers. Subsection (a) of Section 77 provides:

"\* \* \* Upon the filing of such a petition, the judge shall enter an order either approving it as properly filed under this section, if satisfied that such petition complies with this section and has been filed in good faith, or dismissing it, if he is not so satisfied. If the petition is so approved, the court in which such order is entered shall, during the pendency of the proceedings under this section and for the purposes thereof, have exclusive jurisdiction of the debtor and its property wherever located, and shall have and may exercise in addition to the powers conferred by this section all the powers, not inconsistent with this section, which a Federal court would have had if it had appointed a receiver in equity of the property of the debtor for any purpose \* \* \*"

Under the broad jurisdiction so granted, a district court sitting in bankruptcy in a reorganization proceeding under Section 77 has wide discretionary jurisdiction to issue orders to its trustees in connection with the operation of the debtor's estate.

In this instance, in view of the provisions of the Railway Labor Act, this jurisdiction would be limited. The Court could, in its discretion, order its Trustees not to change working conditions which had been established pursuant to the Railway Labor Act. It could not enter an order changing working conditions, unless the change was brought about in the manner prescribed in the Railway Labor Act; nor could it enter an order to enforce an

agreement if such agreement in effect changed working conditions and had not been entered into pursuant to the Railway Labor Act.

The controlling issues in this case are whether the 1940 agreement with ORC changed working conditions within the meaning of the Railway Labor Act, and whether the 1943 agreement with BRT changed such conditions. Only if the 1940 agreement did not change working conditions, and the 1943 agreement did change working conditions could the Court issue the directives for which ORC prayed in its petition. If the agreement of 1943 did not change working conditions, but was merely declaratory of working conditions as established pursuant to the Railway Labor Act, no course would be open to the Bankruptcy Court except to dismiss the petition. Likewise, if the 1940 agreement should be interpreted as purporting to change working conditions of BRT, no rights could be predicated on any language having that effect, as the Court itself would be without power to enforce any such agreement. Under such circumstances, the Bankruptcy Court would be required to dismiss the petition.

These issues could be determined only if the District Court sitting in bankruptcy was in full possession of all the facts, and only if it made certain and definite findings. The Court could not pass upon these issues unless and until it determined

1. whether the working conditions which were not subject to change, except in the manner prescribed by the Railway Labor Act, were those established by the basic agreements between the Debtor and ORC and BRT as supplemented by the establishment of switching limits in 1929,
2. whether the agreement of 1940 with ORC purported to change working conditions, and if so, whether to that extent the agreement was valid in whole or in part, and
3. whether the agreement of 1943 with BRT changed working conditions.

Only by making such findings and findings on which they were based could the Court properly pass on the question presented to it for adjudication.

The Court would have to make such findings in order to determine whether or not it had the power to issue an order to its Trustees relative to the carrying out of

- a. the basic agreements between the Debtor and ORC and BRT as supplemented by the establishment of switching limits in 1929; or
- b. the agreement with ORC entered into in 1940; or
- c. the agreement with BRT entered into in 1943.

The assumption by the District Court of jurisdiction in this instance for the purpose of making such determinations was not an abuse of its discretion since the issue presented to the Court involved action which its Trustees were in the process of taking in connection with the operation of the Debtor's Estate, and which had been challenged by the petition of ORC as being a violation of the rights of its members.

Even though, because of the provisions of the Railway Labor Act, the Court's jurisdiction was limited so far as the type of order it could enter was concerned, it is clear that to enter an order within the limits of its jurisdiction, the Court, of necessity, would have to determine the effect and validity of the several agreements involved in this proceeding. Without doing so, it would not have the basis on which to found an order which would be clearly within its jurisdiction to enter. This is so, even though in determining whether an order should be entered, and the type of order which should be entered, the Court would have to consider rights which are governed by the Railway Labor Act.

Decisions in cases arising solely under the Railway Labor Act, in which there were no questions concerning

the Bankruptcy Act, are clearly not precedents in this instance so far as the jurisdiction of the district court sitting in bankruptcy is concerned, and it does not seem necessary to cite or to distinguish such decisions.

## POINT II

**The 1943 agreement with BRT did not change working conditions within the meaning of the Bankruptcy Act or the Railway Labor Act, and the agreement was one which the Trustees had power and were under a duty to make.**

The Circuit Court of Appeals held that the proposed displacement of road conductors involved a change in working conditions within the sweep of the Railway Labor Act. That holding appears to be erroneous, unless the expression "change in working conditions" is construed as embracing a change which is essential to the recognition of the relative territorial rights of the members of two brotherhoods, measured by their respective basic agreements with the carrier, as supplemented by the establishment of switching limits. It is hard to believe that Congress intended to impose procedural conditions upon the accomplishment of a result required by law. That the Trustees were justified in acceding to the demands of the BRT to man the five drills in question appears from the following uncontroverted facts appearing in the record:

Under its basic agreement with the Debtor, effective August 1, 1927, the ORC has general jurisdiction over road runs.

Under its basic agreement with the Debtor, effective May 1, 1928 (the wage provision being retroactive to 1926), the BRT has general jurisdiction over yard runs.

In August, 1929, while these two basic agreements were

in effect, the Debtor, with the concurrence of all the brotherhoods involved, including the ORC and BRT, established switching limits, the southern boundary of which was Morse's Creek.

The five drills involved in this proceeding are operated within the switching limits as established in August, 1929, that is they were operated north of Morse's Creek.

At the hearing before the Standing Master, the Petitioners first contended that switching limits had not been established. However, during the course of the hearing they admitted this important fact. As appears from the Standing Master's report (R. 40):

"There was some disputed testimony to the effect that switching limits never had been established, but, ultimately, it was admitted as a fact by all of the parties to this litigation, and particularly the two railroad unions involved, that the switching limits were established in August of 1929."

**(A) The establishment of switching limits in 1929 with the consent of both Brotherhoods fixed a line of demarcation between road service and yard service.**

The effect and validity of the agreements of 1940 and 1943 must be determined in the light of the uncontroverted facts.

The Standing Master found (R. 40):

"The effect of the establishment of switching limits was that yard men, represented by the Brotherhood of Railroad Trainmen, should not perform work outside of them, except in cases of emergency and that road men, represented by the Order of Railway Conductors of America, should not perform work within them."

The Petitioners excepted to that finding of the Master (R. 45-50).

In his opinion, relative to exceptions to the Standing Master's report, the Honorable Guy L. Fake, United States District Judge for the District of New Jersey, stated:

"The Master has found as a fact that the dividing line between the territories of these two Unions is fixed by the switching limits and that roadmen should not perform work within switching limits and yardmen should not perform work outside switching limits" (R. 51).

and added:

"Upon a careful study of the record and the briefs and after hearing oral argument, I am of the opinion that the findings of the Master should be affirmed. He has stated the reasons in his report and nothing will be gained by restating them here" (R. 52).

The Circuit Court of Appeals likewise held that the purpose of establishing switching limits was to fix a line of demarcation between road service and yard service. In the opinion, it is stated:

"The purpose of establishing the boundaries of the yard was to fix a line of demarcation between road service and yard service. It was to designate a line beyond which yard conductors should not go, and inside of which road conductors should not work, except in cases of emergency" (R. 59).

The Standing Master who heard all the testimony in this proceeding, the United States District Court Judge, who carefully studied the record and the briefs and heard oral argument, and the Circuit Court of Appeals, which had before it all the testimony and exhibits, found a sufficient basis in the record to hold that by the establishment of switching limits a line of demarcation between road service and yard service was set up. Therefore, this



Court should not disturb such finding, which is based on facts determined by the Master on evidence before him, and which was concurred in by both the District Court and the Circuit Court of Appeals. Rather, it should follow the rule enunciated in *Anderson v. Abbott*, 321 U. S. 349, page 356:

"Some of these findings have been challenged. But we do not stop to examine the evidence. We accept those findings, as they were concurred in by two courts and no clear error is shown. *Brewer-Elliott Oil Co. v. United States*, 260 U. S. 77, 86; *Alabama Power Co. v. Ickes*, 302 U. S. 464, 477."

In view of the uncontroverted facts, and the finding as to the effect of the establishment of switching limits, it follows that the territorial rights of ORC and BRT were, long prior to 1940, defined and fixed by the basic agreements of 1927 and 1928 as supplemented by the establishment of switching limits in 1929.

**(B) ORC, by the agreement of 1940, to which BRT was not a party, did not, or could not, acquire any rights to man with its conductors the five drills which operate within switching limits.**

All parties agreed and the Standing Master found that, even after the switching limits were established, each union, from time to time, encroached upon the territory of the other (R. 42). Road conductors manned five drills which were operated within switching limits, and yard conductors manned five transfer runs which extended south of the switching limits. Mere acquiescence by all the parties involved in this overlapping could not, and did not, work any change in the basic agreements of either ORC or BRT as supplemented by the establishment of switching limits. As the Master found

... neither union, as against the other, could obtain any prescriptive right, by user or long established practice" (R. 43).

When ORC determined that it would no longer permit BRT men to encroach on its territory, it protested against yardmen operating the transfer runs south of Morse's Creek. As a result of that protest, the agreement of 1940 with ORC was made. The agreement was one which was negotiated by representatives of the Debtor and of ORC, and BRT was not a party to the negotiation, nor was it a party to the agreement.

The agreement provided:

"After March 25th, 1940, Road Conductors will perform all conductors' service Morsec Creek and South on the Perth Amboy Branch" (R. 6).

It also contained a provision:

"No other change from the present method of assigning Conductors to service operated in the territory described in the preamble hereof, will be made except by agreement between the parties hereto" (R. 6).

Since, under the basic agreement with ORC, as supplemented by the establishment of switching limits, road conductors were entitled to man the runs south of Morse's Creek on the Perth Amboy Branch, that portion of the agreement which so provided was merely declaratory of the rights of ORC under its basic agreement as supplemented by the establishment of switching limits. It merely reiterated that ORC had the right to man the trains south of Morse's Creek. Such right was not granted by the agreement of 1940, it having previously been granted, but the agreement did assure ORC that BRT men would no longer be permitted to encroach upon territory assigned to ORC.

ORC contends that the agreement of 1943 with BRT changes working conditions; not working conditions which were established by the basic agreements between the Debtor and ORC and BRT as supplemented by the establishment of switching limits in 1929, but working conditions which ORC alleges were established by the agreement of 1940 between the Trustees and ORC. In support of this contention, it relies on the second quoted portion of the agreement of 1940 which provides:

"No other change from the present method of assigning Conductors to service operated in the territory described in the preamble hereof, will be made except by agreement between the parties hereto" (R. 6).

ORC contends that by virtue of this portion of the agreement, it acquired the right to man the five drills north of Morse's Creek in violation of the basic rights of BRT, even though BRT was not a party to the said agreement. It is then urged that when the agreement was made with BRT in 1943, recognizing the rights of yardmen to man the drills, the right allegedly acquired by ORC by the 1940 agreement was taken away without complying with the provisions of the Railway Labor Act.

The real crux of this controversy, therefore, is whether the second quoted portion of the agreement of 1940 did change or could change working conditions as established by the basic agreements as supplemented by the establishment of switching limits, or whether the 1940 agreement, properly interpreted in the light of all the facts which were before the Special Master, did not change working conditions as previously established, but was merely declaratory of existing rights.

The language of the second quoted portion of the 1940 agreement standing alone would perhaps be ambiguous. ORC argues that it should be interpreted to mean that the agreement granted to ORC the right to man the five

drills north of Morse's Creek. However, the first portion of the agreement, by clear and explicit language, recognizes the rights of ORC conductors to man drills south of Morse's Creek. This by implication in itself would indicate that Morse's Creek was recognized as the dividing line between yard service and road service.

If it had been intended by the second quoted portion of the 1940 agreement to grant rights to ORC in territory north of Morse's Creek, it would have been an easy matter to say so in so many words.

ORC in making an agreement intended for its protection against continued encroachment upon its rights to man trains south of Morse's Creek should not be heard to say that such language produced an illegal result, namely, a change in working conditions brought about in a manner not consistent with the provisions of the Railway Labor Act.

If this second quoted portion of the 1940 agreement is interpreted as not applying to the drills north of Morse's Creek in the light of all the facts and in view of the basic agreements between the Debtor and ORC and BRT, as supplemented by the establishment of switching limits, ORC would be without any basis whatever for asserting any rights to man the five drills, and the contention that the agreement of 1943 with BRT changed ORC working conditions would be without foundation.

On the other hand, if it should be held that the second quoted portion of the 1940 agreement might be interpreted to purport to give road conductors the right to man the five drills north of Morse's Creek, it would not follow that ORC conductors would have such rights, nor would it follow that the agreement of 1943 with BRT brought about a change in working conditions.

As was stated before, the rights of ORC and BRT were fixed and definite long prior to the date of the 1940 agreement. Working conditions, so far as these two brotherhoods were concerned, were defined by the basic

agreements as supplemented by the establishment of switching limits in 1929. These working conditions so established could be legally changed or altered only by following the procedure prescribed in the Railway Labor Act.

At the time the 1940 agreement was made, members of BRT, under its basic agreement as supplemented by the establishment of switching limits were entitled to man with conductors the five drills, and that was so even though they had not yet asserted that right.

At the same time, ORC had no rights, under its basic agreement as supplemented by the establishment of switching limits in 1929, to man with conductors the five drills, even though as of that date its conductors were actually working on the five drills. Thus, ORC contends that by virtue of its 1940 agreement, to which BRT was not a party, and which was not made pursuant to the terms of the Railway Labor Act, it secured certain rights to which it was not entitled under its basic agreement.

Any agreement producing such a result, entered into without the consent of the other interested brotherhood, and without following the procedure prescribed by the Railway Labor Act, would be invalid and unenforceable, and the Bankruptcy Court could not, under subsection (n) of Section 77 of the Bankruptcy Act, order the Trustees to put it into effect. Even if the parties thereto had presented the agreement of 1940 to the Bankruptcy Court, and had obtained the Bankruptcy Court's approval of the agreement, this would not have prevented the Bankruptcy Court, when apprised of all the facts as to the basic agreements, and the meaning attributed by ORC to the second quoted portion of the 1940 agreement, from revoking such approval if the agreement infringed on the rights of BRT as established by its basic agreement as supplemented by the establishment of switching limits in 1929. *First National Bank of Tulsa v. Jones*, 61 Fed. Supp. 364.

Accordingly, if the second portion of the agreement should be interpreted as ORC contends, it would still have

derived no rights thereunder which it can assert in opposition to rights which were granted to BRT under its basic agreement as supplemented by the establishment of switching limits.

ORC can gain no support for its position from the fact that the agreement was made, for as was said in *Order of Railroad Telegraphers v. Railway Express Agency, Inc.*, 321 U. S. 342, at page 347:

"We hold that the failure of the carrier to proceed as provided by the Railway Labor Act of 1926, then applicable, left the collective agreement in force throughout the period and that the carrier's efforts to modify its terms through individual agreements are not effective."

Since the 1940 agreement with ORC, to which BRT was not a party, could not change previously established working conditions, it follows that the working conditions which could not be changed by the Trustees, except in the manner prescribed in the Railway Labor Act, were those which had been established prior to the 1940 agreement. These, as found by the Standing Master, are the working conditions established by the basic agreements as supplemented by the establishment of switching limits.

The agreement of 1943 with BRT was merely declaratory of working conditions which had been established by the basic agreements as supplemented by the establishment of switching limits. That being so, the 1943 agreement did not change working conditions within the meaning of subsection (n) of Section 77 of the Bankruptcy Act, or within the meaning of the Railway Labor Act. It merely reaffirmed working conditions which had been previously established pursuant to the Railway Labor Act. As the District Court Judge, who carefully studied the records, the brief, and heard oral argument, decreed, the 1943 agreement is in nowise a violation of the Bankruptcy Act or the Railway Labor Act.



**CONCLUSION**

It is respectfully submitted that the District Court sitting in bankruptcy properly exercised jurisdiction in this proceeding, and that its determination that the agreement of 1943 was in nowise a violation of subsection (n) of Section 77 of the Bankruptcy Act or of the Railway Labor Act was proper.

Respectfully submitted,

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October, 1945.